

suitable" in P4 and "not suitable" in P7 with reference to the workers of the third respondents (The Selangor Pewter Co. Sdn. Bhd.) the Registrar meant that they are not in a *similar* trade, occupation or industry as those in the applicant Union, if the parties to the present proceedings are in any doubt about that.

Neither party seem to be in doubt that that was exactly what the Registrar meant, in which event there can be no doubt that the expression of such opinion is well within his powers as given by section 2(2).

I am therefore of the view that the respondents are right and that the court should not be invited to make the declarations sought since an alternative remedy is clearly prescribed by law.

The preliminary objection is therefore allowed and the application dismissed with costs.

Objection allowed.

Solicitors: *Vijandran & Zukifli; Shearn Delamore & Co.*

LEE WENG SANG v. PUBLIC PROSECUTOR

[A.Cr.J. (Hashim Yeop A. Sani J.) May 16, 1975]
[Ipoh — Criminal Appeal No. 107 of 1974]

Criminal Law and Procedure — Joint charge — Plea of guilty by one of accused — Duty of prosecution — Necessity of showing that the firearm is serviceable — Firearms (Increased Penalties) Act 1971, ss. 2 and 8.

In this case the appellant had pleaded guilty to a charge of unlawful possession of a pistol and a grenade and ammunition. The appellant had been charged jointly with another person but his co-accused claimed to be tried. No evidence was produced to show that the pistol and grenade were serviceable.

Held: (1) the plea of guilty of the appellant should not have been considered until after the trial of the other person;

(2) the Firearms (Increased Penalties) Act 1971 is certainly a penal Act and therefore section 8 must be construed and must be read in conjunction with the definition of section 2 of the Act. Therefore for an offence to be created it must be shown that the firearm concerned is capable of discharging a shot, bullet or other missile by means of an explosive charge which simply means that the firearm was in a serviceable condition. The fact that an accused pleaded guilty to the charge did not absolve the prosecution from showing that the firearm concerned was in a serviceable condition.

CRIMINAL APPEAL.

Paramjit Singh for the appellant.

Wan Abdul Majid bin Wan Hamid (Deputy Public Prosecutor) for the respondent.

Hashim Yeop A. Sani J.: This was an appeal against the sentence imposed in the Special Sessions Court in Ipoh on October 10, 1974 where the Appellant had pleaded guilty to two charges of unlawful possession of a pistol and a grenade and also of unlawful possession of 54 rounds of 9 mm live ammunitions. In respect of the charge for unlawful possession of the pistol and the grenade, the Appellant was sentenced to 7 years' imprisonment and 6 strokes of the rotan under section 8 of the Firearms (Increased Penalties) Act, 1971 and in respect of the charge for

A unlawful possession of the live ammunitions, the Appellant was sentenced to 3 years' imprisonment under section 9(a) of the Arms Act, 1960, both sentences to run concurrently.

At the commencement of the hearing of the appeal counsel for the appellant sought permission to address the court on a number of points pertaining to the records of the learned Special President with a view to invite the court to exercise its revisionary powers under the Criminal Procedure Code. Permission was granted and on behalf of the appellant three main points were raised with regard to the records. The first point, which I dismissed summarily, was that the records of the learned Special President did not indicate that the provision of section 173(b) of the Criminal Procedure Code (F.M.S. Cap. 6) was complied with in that when the appellant was brought again before the learned Special President on October 10, 1974 the proviso to that paragraph of section 173 was not fulfilled since it was not stated in the records on that date that the appellant then understood the nature and consequences of his plea and intended to admit without qualification to the offence. On perusing the records I found absolutely nothing wrong in the proceeding on the date in question because the appellant had in fact been produced before the learned Special President a number of times before that date and that when he was first produced on September 19, 1974 it was recorded that the court was satisfied that when the appellant wanted to plead guilty he understood the nature and consequences of his plea. When he was again produced on October 10, 1974 the charges were read again and the appellant still maintained his plea of guilty.

The second point raised on behalf of the appellant was that according to the facts disclosed by the prosecuting officer there were in all three bags found by him but of these only one paper bag was clearly and expressly said to be found in the room occupied by the appellant and another person. As possession is of paramount importance in this offence, it was contended on behalf of the appellant that the facts disclosed created a doubt as to the possession by the appellant of the other articles in the other two bags. I also dismissed this point because the records pertaining to the facts stated by the prosecuting officer should be read as a whole. It was clear from the records that the police officer went to a room occupied by, and rented to, the appellant and another person. In the room the police officer found the appellant and the other person and upon searching the room, the officer found the articles which were produced.

The third point raised on behalf of the appellant was that the facts disclosed by the prosecution following the plea of guilty did not disclose an offence under the Firearms (Increased Penalties) Act, 1971 as specified in the first charge on the grounds that there was no evidence, in fact not even a bare statement, that the pistol was serviceable. From the records of the learned Special President it would appear that the prosecuting officer made a bare statement that the police officer when searching the room found a "live grenade" in a bag (Exhibit P4), but nothing was mentioned about the serviceability of the pistol.

The final point and this was the point to which I drew the attention of counsel for the appellant, was

the nature of the charges themselves. In both the charges the appellant was charged "jointly" in possession of these articles with another person, Wong Ah Yong. According to the records of the learned Special President, Wong Ah Yong was the first accused who claimed trial to both charges. The appellant was the second accused. Since it was also an essential ingredient of the offence that joint possession must be proved the fact that the appellant had pleaded guilty whereas the co-accused claimed trial to both the charges created then an awkward situation. Possession consists of physical control over a thing coupled with an intention to exclude all others from this control. The situation was such that when the learned Special President accepted the plea of guilty of the appellant the co-accused in fact disputed joint possession.

Having regard to all the circumstances of this case I decided to exercise my revisionary powers under section 325 of the Criminal Procedure Code (F.M.S. Cap. 6) on the following grounds:—

- (1) The first charge deals with unlawful possession of firearms, to wit, one STAR 9 mm/38 Pistol No. 4464880 and one grenade, without a licence granted under section 4 of the Arms Act, 1960 punishable under section 8 of the Firearms (Increased Penalties) Act, 1971. It is to be noted that section 4 of the Arms Act, 1960 deals only with the grant and renewal of licences and permits for "arms". It is therefore a procedural section. Section 8 of the Firearms (Increased Penalties) Act, 1971 itself creates an offence for any person to be in unlawful possession of a "firearm" and the punishment for the offence shall be imprisonment for a term which may extend to fourteen years and with whipping with not less than six strokes. It is not as the prosecution contended that the offence is under the 1960 Act and only the punishment is under the 1971 Act. The word "firearm" is used in the first charge itself which is the word used to create the offence under section 8 of the 1971 Act. The word "firearm" is also defined in section 2 of the 1971 Act to mean "any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged by means of an explosive charge, and includes a bomb or grenade containing an explosive charge." The word "discharge" is also defined in that Act. The Firearms (Increased Penalties) Act, 1971 is certainly a penal Act and therefore section 8 must be strictly construed and must be read in conjunction with the definition of section 2 of the Act. Therefore for an offence to be created under section 8 of that Act it must be shown that the firearm concerned is *capable* of discharging any shot, bullet or other missile by means of an explosive charge which simply means that the firearm is in a serviceable condition. The fact that an accused pleads guilty to a charge under section 8 of that Act does not, in my view, absolve the prosecution from showing that the firearm concerned is in a serviceable condition. It may be sufficient to have a bare statement to that effect in the brief facts of the case following the plea of guilty but it is most desirable that this bare statement can be supported by a report of an expert who has tested the firearm in question. It may

of course not be necessary, where an accused pleads guilty, to also tender this report.

- (2) Both the charges dealt with joint possession. In such a case as this where one of the accused persons pleads guilty to the offence whereas the other claims trial it is not desirable, in my view, to consider the plea of guilty until after the trial of the other person. An awkward situation will arise if the other person is acquitted of the charge or charges and therefore the element of joint possession will no longer be obtained to constitute the offence against the accused. By not accepting the plea at that stage will also enable the prosecution to consider amending the charge at a later stage after the facts have come out more clearly after the trial of the other accused.

For the above reasons I ordered that the conviction on both charges against the appellant be quashed and there should be a retrial.

Conviction quashed. Retrial ordered.

Solicitors: S. Seenivasagam & Co.

CREDIT CORPORATION (M) BHD. v. THE MALAYSIA INDUSTRIAL FINANCE CORPN. & ANOR.

[O.C.J. (Abdul Hamid J.) June 9, 1975]

[Kuala Lumpur — Civil Suit No. 376 of 1974]

Hire Purchase — Ownership of chattel under hire purchase agreement — Transfer by hirer — Sale of Goods Ordinance, 1957 ss. 29 and 30(2) — Contracts (Malay States) Ordinance, 1950, s. 19 — Hire Purchase Act, 1967, ss 4 & 13.

The plaintiffs purchased a car and entered into a hire purchase agreement with a hirer. The car was registered in the name of the hirer with the plaintiffs' claim for ownership indorsed on the register and the registration card. The first defendant purchased the car from a third party and entered into a hire purchase agreement with the second defendant. After terminating the hire, the plaintiffs repossessed the car. The plaintiffs thereupon sought a declaration that they were the owners of the car. The defendants counterclaimed for trespass, conversion and wrongful detention and damages.

Held: (1) upon the true construction of the plaintiffs' agreement which was of a type to which the Hire Purchase Act applied, until the hirer had exercised his option to purchase the car by paying the total rentals and fulfilling all his obligations under the agreement, no property in the car passed to the hirer;

(2) even though the hirer was the registered owner of the car he was only in law the person who had possession and use of the car and this fact did not necessarily make him the legal owner of the car;

(3) in the circumstances the plaintiffs' claim must succeed and an order made declaring that the car was the property of the plaintiffs.

Cases referred to:—

- (1) *Lee v. Butler* [1893] 2 Q.B. 318.
- (2) *Helby v. Matthews* [1895] A.C. 471.
- (3) *United Engineers (Malaysia) Ltd. v. Lai Ping Yoon* [1968] 1 M.L.J. 189.
- (4) *Central Newbury Car Auctions Ltd. v. Unity Finance Ltd.* [1957] 1 Q.B. 371.